

FILED
Clerk
District Court

NOV - 9 2007

For The Northern Mariana Islands
By _____
(Deputy Clerk)

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Attorneys for Plaintiff

**IN THE DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

HOMAYAN KABIR,

Plaintiff,

vs.

**CNMI PUBLIC SCHOOL SYSTEM and
JONAS BARCINAS,**

Defendants.

Civ. No. **CV-07-0034**

COMPLAINT

Plaintiff Homayan Kabir hereby complains against the Defendants as follows:

Jurisdiction and Venue

1. The Court has jurisdiction of this matter pursuant to the Covenant to Establish a Commonwealth of the Northern Mariana Islands In Political Union With the United States of America (authorizing Congress to establish this Court), 48 U.S.C. § 1821-22 (establishing this Court and granting it the jurisdiction of a district court of the United States), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1332 (diversity jurisdiction), 28 U.S.C. § 1343 (jurisdiction over civil rights actions), and 28 U.S.C. § 1367 (supplemental jurisdiction). Venue is proper in this district under 28 U.S.C. § 1391(b) and (c).

Parties

2. Plaintiff Homayan Kabir is a citizen of Bangladesh residing in the CNMI. At all times pertinent to this Complaint, he was employed as a security guard at Dandan Elementary School,

1 Saipan, CNMI.

2
3 3. Defendant CNMI Public School System (hereinafter "PSS") is a nonprofit corporation
4 established by CNMI statute. It is the state education agency for preschool, elementary and
5 secondary programs for the CNMI, and operates Dandan Elementary School. At all times pertinent
6 to this Complaint, PSS was an employer of Plaintiff within the meaning of Title VII of the Civil
7 Rights Act of 1964.

8
9 4. Defendant Jonas Barcinas is a citizen of the United States residing in the CNMI. At all
10 times pertinent to this Complaint, Defendant Barcinas was principal of Dandan Elementary School,
11 an agent of Defendant PSS, Plaintiff's immediate supervisor, and an employer of Plaintiff within the
12 meaning of Title VII of the Civil Rights Act of 1964. At all times pertinent to this Complaint,
13 Defendant Barcinas acted under color of CNMI law.

14
15 **Facts**

16 5. Plaintiff was employed as a security guard at Dandan Elementary School, Saipan, from
17 April to October 2005, and again from July to October 2006.

18
19 6. During Plaintiff's employment at Dandan Elementary School, Defendant Barcinas
20 repeatedly made sexual advance to Plaintiff and engaged in acts of sexual harassment toward him,
21 including propositions of sexual intimacy and, on at least three occasions, grabbing and kissing
22 Plaintiff.

23
24 7. Defendant Barcinas expressly and implicitly threatened Plaintiff that if he did not submit
25 to these sexual advances, his employment contract would be canceled.

1 8. The sexual advances were unwelcome and were repeatedly refused and rebuffed by
2 Plaintiff.

3
4 9. The sexual advances resulted in a hostile and abusive working environment for Plaintiff.

5
6 10. As a result of refusing the sexual advances, Plaintiff was subjected to retaliation by
7 Defendant Barcinas, including but not limited to further harassment on the job, onerous and/or
8 demeaning work assignments, unpaid work, and finally the non-renewal of his employment contract.

9
10 11. Defendant PSS knew or should have known of Defendant Barcinas' actions, but failed
11 to take remedial action.

12
13 12. The actions of Defendants set forth in this Complaint were taken intentionally, and with
14 malice or reckless indifference to the protected rights of Plaintiff.

15
16 **First Cause of Action – Unlawful Employment Practices (Title VII)**
17 **(Against Both Defendants)**

18 13. Paragraphs 1-12 of the Complaint are realleged and incorporated here by reference.

19
20 14. By reasons of the foregoing acts, Defendants have discriminated against Plaintiff with
21 respect to his compensation, terms, conditions and privileges of employment because of Plaintiff's
22 sex, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*

23
24 15. Plaintiff timely filed a discrimination charge against Defendants with the Equal
25 Employment Opportunity Commission (EEOC), and received notice of his right to sue from the
26 EEOC within ninety days of the filing of this Complaint. A copy of the EEOC notice is attached

hereto as an Exhibit.

16. By reason of Defendants' unlawful employment practices, Plaintiff is entitled to remedies as set forth in 42 U.S.C. § 2000e-5(g) and 42 U.S.C. § 1981a.

Second Cause of Action – Violation of Civil Rights (§ 1983)

(Against Defendant Barcinas)

17. Paragraphs 1-16 of the Complaint are realleged and incorporated here by reference.

18. Defendant Barcinas, through his actions as set forth herein, has subjected Plaintiff to the deprivation of his constitutional rights to due process of law and equal protection of the laws, and is liable to Plaintiff in a civil action under 42 U.S.C. § 1983.

Third Cause of Action – Violation of Civil Rights (CNMI Constitution)

(Against Both Defendants)

19. Paragraphs 1-18 of the Complaint are realleged and incorporated here by reference.

20. As a result of Defendant Barcinas' actions as set forth herein, Plaintiff has been deprived of liberty and property without due process of law in violation of Article 1 Section 5 of the CNMI Constitution; has been denied the equal protection of the laws in violation of Article 1 Section 6 of the CNMI Constitution; has been denied the enjoyment of civil rights and been discriminated against in the exercise thereof on account of sex in further violation of Article 1 Section 6 of the CNMI Constitution; and his right of individual privacy has been infringed in violation of Article 1 Section 10 of the CNMI Constitution.

Fourth Cause of Action – Assault and Battery

(Against Defendant Barcinas)

21. Paragraphs 1-20 of the Complaint are realleged and incorporated here by reference.

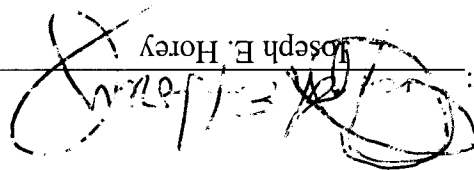
22. The unwelcome grabbing and kissing of Plaintiff by Defendant Barcinas constitutes an assault and battery actionable at common law.

WHEREFORE, Plaintiff prays the Court grant him the following relief:

1. General and incidental and consequential damages in an amount to be proven at trial.
2. An order enjoining the Defendants from engaging in unlawful employment practices.
3. An order requiring such affirmative action by Defendants as may be appropriate, including back pay, or any other equitable relief as the court deems appropriate.
4. Compensatory and punitive damages, including but not limited to damages for emotional pain, suffering, inconvenience, mental anguish and loss of enjoyment of life.
5. Interest.
6. Costs.
7. Attorney's fees.
8. Such other and further relief as the Court deems just and proper.

Respectfully submitted this 9th day of November, 2007.

O'CONNOR BERMAN DOTTS & BANES
Attorneys for Plaintiff

By: 
Joseph E. Horey

3345-01-071109-complaint.wpd

DISMISSAL AND NOTICE OF RIGHTS

To: **Homayan Kabir**
c/o Joseph E. Horey, Esq.
Second Floor, Nauru Building
P.O. Box 501969
Saipan, MP 96950-1969

From: **Honolulu Local Office**
300 Ala Moana Blvd
Room 7-127
Honolulu, HI 96850



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

486-2007-00138

Raymond Griffin, Jr.,
Investigator

(808) 541-3721

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.



Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.



While reasonable efforts were made to locate you, we were not able to do so.



You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Timothy A. Riera

Timothy A. Riera,
Director

8/14/07

(Date Mailed)

Enclosures(s)

cc:

Karen Klaver, Esq.
PSS Legal Counsel
CNMI- PUB SCHL SYSTEM
State Board of Education
P.O. Box 501370
Saipan, MP 96950

1-10-07
 O'Connor, Denise, Health & Human Resources
 RECEIVED
 Jhen
 8/17/07

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
or the Age Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/00 to 12/1/00, you should file suit **before 7/1/02** -- not 12/1/02 -- in order to recover unpaid wages due for July 2000. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII and the ADA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.